



L. JOYCE HAMPERS
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

December 23, 1980

The Housing Authority ("Housing Authority"), which is both a "housing authority" and an "operating agency" as those terms are defined in Chapter 121B, Section 1 of the General Laws, is about to acquire a housing development for several million dollars from Inc., a Massachusetts corporation. You inquire whether the Massachusetts deeds excise set forth in Chapter 64D will be imposed upon the instrument transferring the development to the Housing Authority.

Section 1 of Chapter 64D provides:

"There shall be levied, collected and paid, for and in respect of the deeds, instruments and writings hereinafter mentioned and described, or for or in respect of the vellum, parchment or paper upon which such deeds, instruments or writings, or any of them, are written or printed, the excise taxes herein specified:-Deed, instrument or writing, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers..."

It further provides that Chapter 64D does not apply to any deed, instrument or writing to which the Commonwealth or the United States or any of their agencies is a party. Section 2 of Chapter 64D requires that the deeds excise be paid by "the person who makes or

signs the deed", and provides that "[t]he word 'person' shall, for the purposes of [the deeds excise], include political subdivisions of the commonwealth."

Section 3 of Chapter 121B declares that a housing authority as defined in that chapter is a "public body politic."

In cities, housing authorities are created by vote of municipal officers (Chapter 121B, Section 3); four of their members are appointed by the mayor and one by the Department of Community Affairs (Chapter 121B, Section 5). In towns, housing authorities are created by vote at town meetings (Chapter 121B, Section 3); four of their members are elected by the town and one is appointed by the Department of Community Affairs (Chapter 121B, Section 5).

Section 7 of Chapter 121B provides that for purposes of Chapter 268A, which governs the conduct of public officials and employees, a housing authority shall be considered a municipal agency.

Chapter 121B, Section 17 provides that

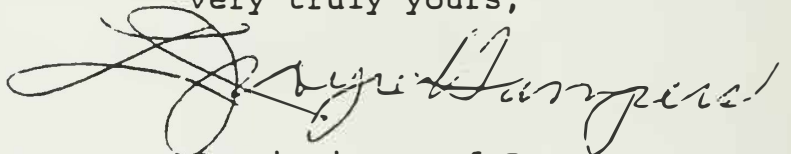
"[n]o bond, note or other evidence of indebtedness executed or obligation or liability incurred by an operating agency shall be a debt or charge against the commonwealth or any political subdivision thereof other than such agency."
(Emphasis supplied.)

The Supreme Judicial Court held in 1962 that under a statute authorizing the Boston Finance Commission to investigate "any and all matters relating to appropriations...accounts, and methods of administration affecting...Boston or the county of Suffolk, or any department thereof," a city auctioneer was required to respond to the Finance Commission's inquiries "relevant to any dealings affecting the Boston housing authority"; the Court declared that a housing authority is "a public body, analogous in various respects...to a municipal corporation." Finance Commission of Boston v. McGrath, 343 Mass. 754 (1962). In Smith v. State Tax Commission, 362 Mass. 869 (1972), the Court held that a conveyance by the trustees of a railroad debtor in reorganization pursuant to a plan approved by the Interstate Commerce Commission and an order of a United States District Court was not exempt from the deeds excise on the ground that the United States or any of its agencies was a party to the instruments of conveyance.

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Based on the foregoing, it is ruled that the deeds excise will be imposed upon the instrument by which the housing development will be acquired by the Housing Authority; the Housing Authority is a municipal agency, not an agency of the Commonwealth within the meaning of Chapter 64D, Section 1.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Joseph J. Langone". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Commissioner of Revenue

LJH:JXD:mf